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indigent defense news in Texas

September 2012

www.txcourts.gov/tidc



The Texas Indigent Defense Commission is pleased to recognize local governments across Texas that strive to meet a high

standard for indigent defense. This recognition program is inspired by the upcoming 50th anniversary of the landmark U.S. Supreme Court case *Gideon vs. Wainwright* which is March 18, 2013. Counties will be recognized based on how well their programs meet the principles of the [Fair Defense Act](#) and the [American Bar Association's Ten Principles of a Public Defense Delivery System](#). Counties may receive recognition for programs or achievements that demonstrate a significant level of innovation, such as a new solution to a problem, significantly streamlining a process, a measurable and significant increase in productivity, or improved service to indigent defendants or other stakeholders. Recognition may also be given to counties with exceptionally high performing indigent defense systems. In recognizing a county, the Commission seeks to promote innovative, high performing policies that are replicable in other counties.

Counties will receive a certificate reflecting its Texas Gideon Recognition. The county recognitions will be featured on the Commission website, newsletter (statewide and national distribution) and Commission annual report that is sent to the Governor, Lieutenant Governor, Speaker, Chief Justice of the Supreme Court and the Texas Judicial Council. The county will also receive a digital Texas Gideon Recognition seal indicating the year it was given which a county may publish on its website.

Suggestions for indigent defense programs in Texas to be recognized may be submitted on a [submission information sheet and submission form available here](#).

Chair's Message

At the August 20th meeting, in addition to awarding grants, Commission members also adopted proposed grant rules and a new acknowledgment program – the Gideon Recognition Award -- to recognize local governments' advancements in providing indigent defense. Members received indigent defense plan submission status updates, reviewed its final FY 2012 budget, and set its initial budget for FY 2013. Proposed legislation ideas were tabled with a broad consensus that the proposals were non-mission critical and that funding issues were the top priority. Members also signed a letter to state leadership requesting release of unexpended funds in the Fair Defense Account that have not been appropriated to the Commission. Bexar County was commended for addressing all of the findings in a policy monitoring review of its indigent defense program. The Commission will also republish in the Texas Register (as is required every four years) its existing Continuing Legal Education rules and Contract Defender Program rules. I want to thank elected officials who attended the meeting who included District Judge Cara Wood from Montgomery County, District Judge Jeff R. Steinhauser from Austin, Fayette and Waller Counties and Commissioner Patti Jones from Lubbock County.

Sharon Keller, Chair, Texas Indigent Defense Commission, Presiding Judge, Court of Criminal Appeals

Message from the Executive Director

Members of the Texas Indigent Defense Commission

Chair:

The Honorable **Sharon Keller**
Presiding Judge, Court
of Criminal Appeals

Vice Chair:

The Honorable **Olen Underwood**,
Presiding Judge, 2nd Administrative
Judicial Region of Texas

Ex Officio Members:

Honorable **Sharon Keller**

Honorable **Wallace B. Jefferson**,
Chief Justice, Supreme Court

Honorable **Roberto Alonzo**,
State Representative

Honorable **Pete Gallego**,
State Representative

Honorable **Laura Weiser**, Victoria
County Court at Law #1

Honorable **Jeff Wentworth**,
State Senator

Honorable **John Whitmire**,
State Senator

Members Appointed by Governor:

Honorable **Jon Burrows**,
Bell County Judge

Mr. **Knox Fitzpatrick**, Dallas
Attorney, Fitzpatrick, Hagood,
Smith & Uhl, L.L. P.

Mr. **Anthony Odiorne**,
Public Defender, Regional
Capital Defender Office

Honorable **Sherry Radack**, Chief
Justice, First Court of Appeals

Honorable **Olen Underwood**

Honorable **Laura Weiser**

Honorable B. **Glen Whitley**,
Tarrant County Judge

The 2014-2015 Legislative Appropriations Request (LAR) was submitted on August 16th. The Commission pursuant to legislation passed last session is now required to submit its LAR separately from the Office of Court Administration. The Commission directed staff to submit the following requests as "exceptional items" or requests over and above its baseline budget:

- Restore estimated appropriation authority
- Restore unexpended balance (UB) authority
- Increase funding by \$77 million annually

A restoration of estimated appropriation and unexpended balance authority will allow greater funding levels – in excess of the current sum certain – to be allocated towards indigent defense, which will reduce county burdens. Currently there is over \$7.2 million in the Fair Defense Account from FY2011 that may not be spent without permission to carry forward unexpended balances between biennia. Because the funding sources for the Fair Defense Account include court fees and other sources that fluctuate from year to year the sum certain appropriation means that any additional revenue deposited to the account above that amount is unavailable for grants to counties. Staff anticipates this amount will be approximately \$3-4 million in revenue for FY2012 above what is appropriated to the Commission and a similar amount for FY2013. Restoration of estimated appropriation authority rather than a sum certain amount would permit the Commission to spend the full amount of revenue flowing into the Fair Defense Account by increasing grant awards to counties. Since the money in the account is dedicated and can only be spent for indigent defense the extra unappropriated funds do not benefit any other program.

The Commission also requests an appropriation of an additional \$77 million per year, which would allow the Commission to increase grant funding to counties in an amount that would make up the approximately \$77 million per year in increased indigent defense costs counties have incurred since passage of the Fair Defense Act and provide significant funding for felony representation. See the LAR [here](#) and the LBB Budget Hearing [here](#).

In other news, this summer Texas Tech University profiled one of our programs, the Caprock Regional Public Defender (CRPDO), in a [piece](#) on how the program is beneficial to students, counties, and the indigent. In the article, CRPDO Assistant Chief Public Defender Charlie Pelowski explained how the Commission's grant helps counties meet the demands of Gideon and Texas law. "States passed on the responsibility on to the counties, and a lot of them don't have the income and aren't able to pay like other counties," he said. "Because of the grant, for the first two years the counties aren't paying anything for our services." The piece also discussed how the program provides law students with the real-world experience by requiring them to be responsible for cases from intake through disposition. Also from Red Raider Land, DaNae Couch (pictured right), 3L, Texas Tech School of Law was crowned Miss Texas in July and will compete in the 2013 Miss America Pageant. The former intern with the Texas Supreme Court will take a year off from law school to serve as the spokeswoman for the Miss Texas organization. Couch spent the summer interning with the U.S. Attorney's Office in Fort Worth preparing to be a litigator. She plans to return to law school in the fall of 2013, unless she is fortunate enough to be crowned Miss America. *Wreck 'Em Texas Tech!*



Best,
Jim Bethke
Executive Director

FY12 Indigent Defense Expenditure Report due Nov. 1

Government Code §79.036(e) requires county auditors (or treasurers, if there is no county auditor) to provide information to the Commission regarding the expenditures related to legal services provided to indigent criminal defendants during each fiscal year. This statutory report must be completed regardless of whether a county receives grant funds. Here are links to the [FY12 Indigent Defense Expenditure Report \(IDER\) Manual, Supplement for PDOs and Cover Letter](#).

GRANTS AND REPORTING UPDATE

Commission Adopts Revised Grant Rules

The Commission adopted [revised grant administration rules](#) at its meeting on August 20th. The rules have been filed with the Secretary of State and will become effective September 13th. In addition to updating the rules to reflect Commission rather than Task Force and revised statutory reference, the changes include:

- Removing the requirement that counties accept Formula Grants by returning a signed Statement of Grant Award to streamline the process and reduce unneeded paperwork.
- Requiring grantees to develop and submit a monitoring plan when using grant funds to contract for substantial services.
- Establishing a process for grantee to request to appear before the Commission prior to imposing a remedy on the grantee, such as withholding grant funds.
- Establishing timelines and process details for the fiscal monitoring program that align with procedures established previously in the policy monitoring rules.

Contact Bryan Wilson
Grants Administrator

Reminder: Updates Needed to Contact Information for County Grant Designees

In the request for applications for the grant program it states: *All counties must maintain the grant and plan officials contact information on counties' home page set up at <http://tidc.tamu.edu>. Counties must advise the Commission of changes in the authorized official, program director, financial officer, local administrative district judge, local statutory county judge and county judge by updating this website contact information. This information will be used to provide notices for grant or plan submission information. The Commission staff will use e-mail whenever possible to notify counties of required reports and funding opportunities.*

Please take a moment and go to the [Commission grants website](#) and update contact information. And, if there are users that no longer use the website (but still have a user account) please send an [email to Darby Brennan at PPRI](#) who maintains the data. She will then disable that user account.

Commission Awards Over \$2.2 Million in Grants to Texas Counties

The Commission awarded more than \$2.2 million in additional grants to Texas counties at its final meeting of the fiscal year. Tarrant County Judge Glen Whitley, who chairs the Commission's Grants and Reporting Committee, pointed out the importance of these grants: "These funds are direly needed by Texas counties as they continue to absorb the brunt of increased costs in order to ensure that constitutional responsibilities are met."

Additionally, Austin County and Hunt County were awarded special grants totaling \$300,000 to offset extraordinary indigent defense expenditures. Counties that demonstrate extraordinary indigent defense expenses that constitute a financial emergency may apply for assistance from the Commission.

The Commission has distributed funds to Texas counties since 2002 to help meet the statutory and constitutional requirements to provide access to counsel for the poor.

Contact Bryan Wilson
Grants Administrator

The benefits of a Fiscal Monitoring or Technical Assistance Visit:

- Provide an objective assessment of the fiscal accountability relating to indigent defense services.
- Serve as confirmation that internal controls and procedures are in place.
- Identify strengths and opportunities for improvement in procedures.
- Facilitate discussions with employees and local officials to promote operational efficiency.
- Recognize opportunities to automate procedures.
- Recommend improvements to internal controls to prevent inaccuracies and discrepancies.
- Assist with any questions or concerns on indigent defense program requirements.
- Evaluate the county's compliance with applicable laws, regulations, and provisions of the grant.

For questions or technical assistance on improving fiscal process, please contact: Carol Conner, Fiscal Monitor; 512.936.7561; toll-free 866.499.0656; email: carol.conner@txcourts.gov.

FY2012 Fiscal Monitor Visits		
County	Site Visit Date	Type Visit
Delta	9/13/11	Tech Assist
Franklin	9/14/11	Tech Assist
Titus	9/15/11	Tech Assist
Caldwell	9/26/11	Fiscal
Hays	9/27-9/28/11	Fiscal
Comal	9/29/11	Fiscal
Swisher	10/10/11	Tech Assist
Lubbock	10/11-10/14/11	Fiscal
Harrison	1/24/12	Tech Assist
Upshur	1/25/12	Tech Assist
Montgomery	3/13-3/16/12	Fiscal
Colorado	4/3-4/4/12	Fiscal
Bexar	4/25-4/26/12	Fiscal
Freestone	5/14-5/15/12	Fiscal
Anderson	5/16-5/18/12	Fiscal
Crosby	6/25/12	Tech Assist
Dickens	6/25-6/26/12	Fiscal
Hale	6/28/12	Tech Assist
Atascosa	7/9-7/10/12	Fiscal
Wilson	7/11-7/12/12	Fiscal
Hopkins	8/7-8/8/12	Fiscal
Rains	8/9/12	Tech Assist

2011 Indigent Defense Plan Submission and Review Process Update

As of August 9th, 2012 ALL indigent defense plans were approved/submitted to the Commission as required by Section 79.036, Government Code. All counties are therefore eligible to receive disbursements of grant funds. Counties remain active in managing their plans filed with the Commission and seven plans are currently in the process of being updated. Staff reviews plans when changes are made to assure that the new language still meets all plan requirements for the respective section and will contact the local officials to address any needed changes. [Here is a link to all plan data available on the Commission website.](#)

Improving Processes for Handling Mentally Ill Defendants

Article 16.22 and Article 17.032 of the Code of Criminal Procedure set out certain methods of operation for the identification of mentally ill arrestees and for providing treatment and bonding options to these arrestees. These statutes are quite detailed, and in an effort to simplify the stream of events, the Commission has created [flowcharts describing these statutes that are now available on our website.](#)

Review of Existing CLE and Contract Defender Rules

The Commission voted to republish in the Texas Register for comment its previously adopted [rules establishing minimum continuing legal education requirements and contract defender program requirements.](#) The action was to comply with Government Code Chapter 2001, which requires state agencies, including the courts, to review and consider for readoption each of its rules every four years. The rules will be open for public comment for at least 30 days after the notice of their review is published, which we anticipate being this week. The Commission will then consider any comments received and consider readopting the rules at a future meeting.

*Contact Wesley Shackelford
Deputy Director/Special Counsel*

Improving the Process - Ruling on Requests for Counsel

The policy monitor for the Texas Indigent Defense Commission examines the timeliness of counsel appointments across jurisdictions. The monitor has found instances where requests for counsel have been made at magistration, but where no rulings on the requests are listed in the case files. Article 15.17(a) of the Code of Criminal Procedure requires that reasonable assistance in completing any necessary forms is provided to persons requesting counsel at magistration. When a request for counsel is made, a jurisdiction must have clear practices for transmitting the request to the appointing authority and for promptly ruling on the request for counsel.



Continued from page 4.

If a defendant has requested counsel, but there is no ruling on the request for counsel, some problematic results may occur. Article 1.051(f-1) of the Code of Criminal Procedure disallows the prosecutor from communicating with the defendant unless the court has denied the request for counsel. Article 1.051(f-2) disallows the court from directing or encouraging the defendant from communicating with the attorney representing the state unless the court has denied the request for counsel. In short, many case disposition options seem to vanish without a ruling on a request for counsel.

The Challenge

Jurisdictions typically face three challenges in ensuring that all requests for counsel are ruled upon:

1. Failure to provide reasonable assistance to the defendant in completing affidavits of indigence;
2. Failure to promptly transmit requests for counsel to the appointing authority; and
3. Failure to provide a central repository housing all records, whether made before or after a case is filed.

The Solution

Jurisdictions should bring all relevant stakeholders together to determine the roles that each stakeholder should assume in meeting the tasks required by the U.S. Constitution and Texas statutes. Without proper forethought and cooperation between local officials, a judge may not be able to ascertain whether a defendant has requested counsel. In this way, if a defendant subsequently pleads guilty pro se, the plea may not meet the requirements of Article 1.051.

*Contact Joel Lieurance
Policy Monitor*

Three Indigent Defense Trainings Scheduled

Mark your calendars and plan to attend one or all of the following:

November 13, 2012 10:00 a.m. – noon

Recent Indigent Defense Developments and Opportunities

This program will focus on new indigent defense developments and a preview of the upcoming legislative session.

Location: State Capitol, Extension Auditorium, Austin

January 17, 2013 9:00 a.m. - noon

Primer on Indigent Defense and Funding for Newly Elected Officials

A summary of the core requirements Fair Defense law for newly elected judges, legislators, and their staffs at the Capitol.

Location: State Capitol, Extension Auditorium, Austin

March 18, 2013 8:30 a.m. - TBD

Commemorating Gideon's 50th Anniversary

In collaboration with Senator Ellis

Location: State Capitol, Extension Auditorium, Austin

Information will be available on the website soon. However, if you wish to get more information and/or indicate your interest in the meantime, please email terri.tuttle@txcourts.gov. No registration fee for trainings. Individuals are responsible for own travel costs. To assist you in planning your trip, hotel information with contracted government rates is available on the [State Comptroller's website](#). For a map of the Capitol and parking information please refer to the [State Preservation Board website](#).

*Contact Terri Tuttle
Executive Assistant/Project Manager*

Online Resources Available to Texas Counties

These are just a few of the most recent publications available on the [Commission website](#).

- [Using Data to Inform Policy Decisions, Promote Compliance, and Improve Justice Outcomes](#) - presentation made at Texas Center for the Judiciary DWI College July 30 by Jim Bethke
- [Flowcharts](#) describing Articles 16.22 and 17.032 of the Code of Criminal Procedure to aid jurisdictions in improving defense processes related to mental health issues
- [FY12 Indigent Defense Expenditure Report \(IDER\) Manual, Supplement for PDOs and Cover Letter](#) due November 1, 2012
- [Veterans Defender Resource](#), Published March 28th, 2012
- [Improved, Increased Access to Texas Indigent Defense Data Online](#)
- [2011 Fair Defense Law](#)
- [Securing Reasonable Caseloads: Ethics and Law in Public Defense](#), Norman Lefstein, American Bar Association Standing Committee on Legal Aid and Indigent Defendants (November 2011)
- [Video downloads of presentations from Symposium on Indigent Defense, October 27, 2011](#)

Around the Nation

The Justice Management Institute on behalf of ABA Standing Committee on Legal Aid and Indigent Defendants published [Sustaining and Improving Public Defense with Data](#) (by Marea Beeman) *"The importance of telling your story and making your case through evidence is second nature to public defenders. This paper seeks to convey the notion that outside the courtroom, defense agencies need that same foundation of solid evidence, framed through persuasive advocacy, to make and sustain improvement for their offices."*

In State ex rel. Missouri Public Defender Commission v. Water <http://www.courts.mo.gov/file.jsp?id=55767>, the Missouri Supreme Court held that *"the trial court erred insofar as it believed that the Sixth Amendment requires appointment of counsel without regard to whether counsel would be able to offer competent representation . . . and that the Sixth Amendment right to counsel is a right to effective and competent counsel, not just a pro forma appointment whereby the defendant has counsel in name only."* See the Sixth Amendment Center (<http://sixthamendment.org/?p=535>) for a comprehensive analysis of this opinion.

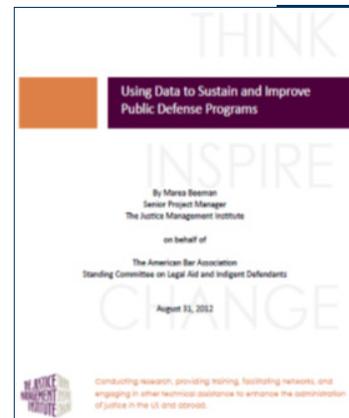
The Brennan Center for Justice at New York University School of Law released Community-Oriented Defense: Start Now, a report examining the different ways public defender offices across the country are working to transform the indigent defense system. (The Brennan Center, July 20, 2012) Thomas Giovanni, the report's author, summarized his findings for the Brennan Center's website. He wrote, *"Offices attain more successful outcomes for individual people and entire communities when they can address the unique needs of their clients," adding that public defender projects "demonstrate that even by starting small, offices can lay the foundation for broader reforms of the indigent defense system."*

The National Association of Criminal Defense Lawyers (NACDL) approved a major bond reform proposal for the first time in over 25 years. (NACDL, July 28, 2012). The [new policy](#) states that release on personal recognizance should be considered first, unless the court makes an evidence-based determination that it will not assure future appearances or protect public safety. In the accompanying press release, NACDL wrote that the financial bond system disproportionately disadvantages the indigent and working class defendants. Instead, NACDL noted that in the vast majority of cases, pretrial supervision can ensure both a defendant's appearance and public safety.

Other News:

The Texas Public Policy Foundation (TPPF) released a report by Vikrant Reddy that included five recommendations for improving in defense in Texas. (TPPF, July 24, 2012). The recommendations in [the report](#) include the reclassification of offenses to those that do not trigger the right to counsel, increased diversion and problem solving by the courts, wider use of victim-offender conferencing, expanded use of open discovery, and the promotion of vouchers to the indigent for the selection of counsel. Implementing these changes, according to author Vikrant Reddy, would prevent *"unnecessary incarceration for low-level offenses"* and *"conflict of interest problems... could be substantially alleviated."* He also argued that the changes could allow thousands of indigent defendants to be removed from

Contact Jim Bethke
Executive Director



Archived e-newsletters are available [online](#).

Interactive Features:

If you're viewing this as a PDF, be sure to take advantage of many of this newsletter's interactive features. Many of the stories feature hyperlinks to additional material, including videos, reports, national news items.

Please contact any of the following staff members for assistance:

James D. Bethke	Executive Director
Edwin Colfax	Research Specialist
Carol Conner	Fiscal Monitor
Dominic Gonzales	Grant Program Specialist
Marissa Kubinski	Administrative Assistant
Joel Lieurance	Policy Monitor
Wesley Shackelford	Deputy Director/Special Counsel
Terri Tuttle	Executive Assistant/Project Manager
Sharon Whitfield	Budget and Accounting Analyst
Bryan Wilson	Grants Administrator

Office of Court Administration launches newsletter CourTex

If you are interested in signing up to receive CourTex please do so by joining the mailing list.



CourTex
August 2012



In This Issue

[Hurricane Season Brings Risks to Texas Courts](#)

[Free Interpreter Service Available](#)

[Justice System Improvement Toolkit Available](#)

[Fiscal Year End Brings Need for Clerk & Court Data Review](#)

[NICS Record Improvement Project](#)

From the Director

Welcome to the Office of Court Administration's newsletter, CourTex. We hope that you will find the information in the newsletter helpful to you and that we can use this tool as a way to regularly communicate information about what is happening at OCA. We also hope that we will be able to share resources that will assist you in your daily work. If you have any questions or suggestions for the newsletter, please feel free to contact us. If you think someone else will find this information helpful, please feel free to forward the newsletter using the link at the end of the newsletter.

David Slayton
Administrative Director
Office of Court Administration

News

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